

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1667 OF 2004
IN
CRIMINAL WRIT PETITION NO. 901 OF 2002

The State of Maharashtra ..Applicants
versus
Sudhakar Bhojaya Shetty & Ors ..Respondents

Mrs. G. P. Mulekar, APP for the Applicants -
State.

Mr. S. A. Tawate for the Respondents.

CORAM : D. G. DESHPANDE &
P.V. KAKADE, JJ.
DATE : 17TH AUGUST, 2005

ORAL ORDER : (PER D. G. DESHPANDE, J.)
(IN CHAMBER)

1. Heard learned APP for the Applicants - State
and the learned advocate for the Respondents.

2. The applicants - State is seeking
clarification in respect of our order dated
21.3.2003 in Criminal Writ Petition No. 901 of
2002. By which order the petition was disposed of
with the statement of the APP that FIR has been

registered and after investigation the charge sheet will be filed. In that petition, Police Officer had filed an affidavit to the effect that after investigation, he will file report to the Magistrate. Now it is contended that investigation has revealed that the complaint of the Respondent was totally false and therefore the Police Officer wants to file B-Summary before the concerned Magistrate.

3. This prayer is opposed by the Advocate for the Respondent on the ground that once the petition is disposed of, no such clarification or modification can be done. He has relied upon the Order of the Division Bench of this Court dated 13.8.2005 in Notice of Motion No. 293 of 2004 in Writ Petition No. 2396 of 2003 (Ratanchand Prabhuji Jain vs. National Insurance Co. Ltd. & ors.). This order reads as under:

The main petition was disposed of by an order dated 15th October, 2003 by a Division Bench of this Court. In view of that, the Notice of Motion does not survive and is disposed of accordingly."

4. This Judgment is of no help to the respondent, firstly, because it is in a Notice of

Motion and in a Civil Writ Petition. In the circumstances of that case, the Division Bench found that the Notice of Motion was not maintainable.

5. Present Application filed by the State is only seeking clarification in view of the further development. If at all the statement of the APP was recorded that charge sheet will be filed it was on the assumption that some case is made out on the basis of the FIR, but when after investigation no such case sufficient to file charge sheet is made out and to the contrary it is revealed that the complaint filed by the respondent is false, the Applicants - State cannot be prevented from filing B-Summary. Therefore, this application is allowed, as prayed. B-Summary to be filed within one week from today before the concerned Magistrate. After the B-Summary is filed, before passing any final orders, the Magistrate will issue notice upon the Respondent through his Advocate Mr. S. A. Tawate, having address at 21, Jenabai Building, 2nd floor, Dadasaheb Phalke Road, Dadar (East), Mumbai 400 014.

(D. G. DESHPANDE, J.)

(P. V. KAKADE, J.)

